

EXHIBIT H

When Recorded Return to:

CITY OF SCOTTSDALE
ONE STOP SHOP/RECORDS
(Dave Roderique)
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

City of Scottsdale Contract No. ____

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made and entered into this ____ day of _____, 20____, by Los Arcos Development L.L.C., a Delaware limited liability company ("Declarant") for the benefit of Declarant and the City of Scottsdale, an Arizona municipal corporation ("Beneficiary").

RECITALS

A. Declarant is the owner of certain real property (the "Burdened Parcels") located within the City of Scottsdale, Maricopa County, Arizona, comprising approximately 42 acres located east of Scottsdale Road and south of McDowell Road and more particularly described on Exhibit A attached hereto.

B. This Declaration is made pursuant to that certain Redevelopment Agreement (the "Redevelopment Agreement ") between Beneficiary and Declarant dated _____, 20____ and recorded _____, 20____ at Document No. _____ of the public records of Maricopa County, Arizona. Capitalized terms not established in this Declaration shall have the meanings established in the Redevelopment Agreement and that certain Memorandum of New Legal Descriptions made by Beneficiary and Declarant dated _____, 20____ and recorded _____, 20____ at Document No. _____ of the public records of Maricopa County, Arizona.

C. As of the date of this Declaration, the Burdened Parcels are unimproved.

D. Pursuant to the Redevelopment Agreement, Beneficiary and Declarant have agreed that Declarant will impose upon the Burdened Parcels the duties, obligations, covenants and burdens described in this Declaration (collectively, the "Restrictions").

E. Beneficiary would not have entered into the Redevelopment Agreement without Declarant's promise to impose the Restrictions and this Declaration upon the Burdened Parcels.

F. Declarant and Beneficiary intend that this entire Declaration and all of the Restrictions be binding upon Declarant and each person owning or claiming an interest in the

Burdened Parcels or occupying, using or being found on the Burdened Parcels (collectively the "Occupants").

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration (including Declarant's and Beneficiary's execution of the Redevelopment Agreement), Declarant imposes the Restrictions upon the Burdened Parcels as follows:

I. USE RESTRICTIONS

1. Use Restrictions. All use and occupation of the Burdened Parcels shall conform in all respects to all and each of the following cumulative provisions:

1.1 Prohibited Activities. The following are prohibited on the Burdened Parcels:

1.1.1 Parking Related Restrictions:

1.1.1.1 Parking by any recreational vehicle for more than three (3) hours during the hours beginning at 12:01 a.m. and ending at 6:00 a.m. on any given day.

1.1.1.2 Parking by any other vehicle for more than three (3) hours during the hours beginning at 12:01 a.m. and ending at 6:00 a.m. on any given day, except for (i) the parking of any vehicle by any party working at any of the Burdened Parcels, and (ii) the parking of any vehicle used in the maintenance or repair of any portion of the Property, the provision of utility or communications services or of any security therefor or for any event or promotion at any of the Burdened Parcels.

1.1.1.3 Any charge for parking (which prohibition shall not apply to any fine or other mechanism levied or otherwise imposed with respect to the enforcement of any parking rules, regulations or policies applicable to any of the Burdened Parcels).

1.1.2 Drive-Through Business. Except with respect to the South Shops Parcel and except with respect to pharmacy operations on any Parcel, any purchase of goods by a person while such person is in or upon a vehicle or other wheeled device. Walk up service to pedestrians is allowed.

1.1.3 Gambling. Gambling activities other than sales of lottery tickets and similar products permitted by applicable law.

1.1.4 Residential Uses. Any residential use shall be made of the Property.

1.1.5 Offices. Offices, other than (i) offices that are incidental to the other uses of a Burdened Parcel not prohibited by this Declaration or applicable law; (ii) offices on the Corner Shops Parcel that have an aggregate square footage that do not, in the aggregate, exceed 5,000 square feet in floor area (measured from the interior face of walls); and (iii) any financial institution on the South Shops Parcel.

1.1.6 Alcoholic Beverages. Any sale of any alcoholic beverage for consumption on any of the Burdened Parcels, other than any sale by any restaurant or entertainment establishment not prohibited by this Declaration for consumption at such restaurant or establishment.

1.1.7 Additional Prohibited Uses.

1.1.7.1 Any pawnshop, thrift store, flea market, swap meet, or other business selling primarily used goods, excluding any store selling new merchandise at any discount from normal retail prices.

1.1.7.2 Any laboratory, excluding the processing of photos and the preparation (but not manufacturing) or dispensing of prescription and non-prescription drugs and remedies.

1.1.7.3 Any mortuary, crematorium or funeral home.

1.1.7.4 Any club or lodge, excluding the solicitation, sale or honoring of club memberships or programs offered, honored or otherwise made available by any retail or wholesale business open to the public.

1.1.7.5 Any tavern, bar, nightclub, cocktail lounge, discotheque, dance hall or other establishment that sells alcoholic beverages for consumption at any of the Burdened Parcels, other than a restaurant or entertainment establishment for which the sale of alcoholic beverages comprises less than fifty percent (50%) of the annual gross revenues of such restaurant or entertainment establishment.

1.1.7.6 Any bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center, but such prohibition shall not apply to the display, demonstration, sale or rental of games, billiards and bowling equipment and other amusement and entertainment products not otherwise prohibited by this Declaration.

1.1.7.7 Any health club or gymnasium, excluding any barbershop, beauty shop or spa, nail care shop, hair care shop or tanning salon, and to the display, demonstration or sale of any health products, health foods, exercise or sporting equipment, exercise or sports clothes.

1.1.7.8 Any training or educational facility (including without limitation any school, college or other facility serving primarily students or trainees rather than customers), excluding (i) the incidental demonstration, training or educational activities (such as conducting "how to" classes) in connection with a business that is not otherwise prohibited under this Declaration, and (ii) incidental areas for reading, watching and listening (such as in book and media stores).

1.1.7.9 Any child care or day care facility other than (i) the incidental provision of child care or child play areas in connection with a business that is not otherwise prohibited under this Declaration, and (ii) any child care facilities that have an aggregate square footage that does not, in the aggregate, exceed 12,000 square feet in floor area (measured from the interior face of walls).

1.1.7.10 Any storage or warehouse facility (including without limitation any "mini-warehouse" facility), other than incidental storage for a business not engaged in the business of storage that is not otherwise prohibited under this Declaration.

1.1.7.11 Any dry cleaning plant, central laundry or laundromat, other than dry cleaning and laundry drop-off and pick-up facilities.

1.1.7.12 Any motel or hotel.

1.1.7.13 Any massage parlor, but this prohibition shall not affect (i) any “seated massage”, or (ii) any therapeutic massage that is offered in any beauty shop or spa that is not otherwise prohibited under this Declaration.

1.1.7.14 Any junkyard, landfill, garbage dump or similar facility for the dumping, disposing, incineration or reduction of trash, refuse, garbage or debris, but excluding the temporary placement or holding of trash, refuse, garbage or debris pending off-site disposition in the manner required by this Declaration.

1.1.7.15 Any telephone call processing center, excluding the incidental use and answering of telephone and other communications devices by any business engaging primarily in other activities.

1.1.7.16 Any manufacturing or assembly of any item, refining, smelting, drilling or mining, other than (i) the assembly and installation (but not manufacture) of any consumer good or product that is offered for sale or lease on the Burdened Parcel, excluding any good or product otherwise prohibited under this Declaration; (ii) the creation of jewelry or other bona fide art or crafts works; and (iii) drilling that is incidental to the construction of improvements on and the installation of utilities for any of the Burdened Parcels.

1.1.8 Nuisances. Any generation of litter, dust, dirt, fly ash, odor or other activity in a manner that violates applicable law or actually constitutes a public or private nuisance.

1.1.9 Waste Handling. Any dumping, disposal, incineration or reduction of trash, refuse, garbage or debris, other than the temporary placement or holding of trash, refuse, garbage or debris generated at a Burdened Parcel pending off-site disposition, in a reasonably clean and sanitary manner and in covered containers shielded from public view. Piling of boxes, cartons, barrels, debris or other items outside the buildings on the Burdened Parcels or in a manner visible from outside the Burdened Parcels, or in a manner visible to areas open to the public is prohibited.

1.1.10 Certain Sales. Any auction or any fire sale or going out of business sale that is advertised as such in a manner that is visible from the outside of the business conducting such sale, other than (i) auctions of bona fide works of art, jewelry, antiques and similar items that are conducted in the regular course of business; (ii) discounts and reductions to prices made in the regular course of business (including without limitation “close-out” pricing of seasonal, discontinued, damaged or limited stock items); and (iii) sales and dispositions conducted pursuant to applicable law pertaining to bankruptcy and/or creditor’s rights and remedies.

1.1.11 Animals. Overnight boarding of animals or any stockyard, excluding (a) animal grooming and veterinarian services and (b) the incidental making of animals available for purchase or adoption.

1.1.12 Certain Communications Equipment. The continued operation, following receipt of written notice from Beneficiary that any communications equipment, methodology or technology used on any of the Burdened Parcels will or may materially interfere with the optimum use or operation of Beneficiary's then existing or future fire, emergency or other communication equipment, methodology or technology (for example, voice or other data carrying, receiving or transmitting equipment) without first obtaining Beneficiary's approval of measures taken or to be taken, at no cost to Beneficiary, to eliminate such interference.

1.2 Noise. Outdoor loud speakers, sirens or other devices for making noise are prohibited and equipment shall be operated so that sound coming therefrom does not exceed the ambient noise level at the boundaries of the Burdened Parcels and cannot be heard at two hundred feet (200') outside the boundaries of the Burdened Parcels, excluding from each of the foregoing restrictions (i) fire, security system, burglar and similar alarms, (ii) construction and reconstruction activity that complies with applicable law, (iii) the operation of ambulance and emergency vehicle sirens and equipment, (iv) safety equipment (e.g. backup alarms on forklifts and other vehicles) and (v) low volume (not discernible at a distance of one hundred (100) feet or more) music speakers.

1.3 Exterior Lighting. Other than as required by applicable law or governmental approvals, exterior lighting shall be shielded or otherwise configured in a manner that minimizes, the extent practicable using readily available and commercially reasonable technology and consistent with prudent security practices, spillover of light from lighted areas at the Burdened Parcels to areas located outside of the Property.

1.4 Conduct at Burdened Parcels. In entering into this Declaration, Beneficiary and Declarant intend to provide the public with an atmosphere that is consistent with community standards, and avoiding any unreasonably noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, adult oriented, or sexually oriented behavior (as described in the immediately following section), business or entertainment, violence or threats thereof at the Burdened Parcels. Any such behavior, business or entertainment at the Burdened Parcels by Occupant (including without limitation, Declarant, any customer of Declarant or any Occupant, or anyone else using any part of the Burdened Parcels) is strictly prohibited. Declarant specifically acknowledges that the requirements of this paragraph are a requirement of this Declaration independent of and in addition to any zoning or other governmental regulation affecting the Burdened Parcels.

1.4.1 No materials shall be displayed, viewed, sold or produced upon any Burdened Parcel depicting specified anatomical areas or specified sexual activities. No person shall exhibit, use, display or offer to sell any devices, objects or paraphernalia which are designed or typically marketed for use in connection with specified sexual activities, except that packaged condoms and other packaged birth control and disease prevention products may be sold to the extent otherwise permitted by law and this Declaration. No person shall perform specified sexual activities upon any Burdened Parcel. No person shall make visible his or her specified anatomical areas. "Specified anatomical areas" shall mean less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered; or any simulation or portrayal of any of the foregoing. "Specified sexual activities" shall mean human genitals in a state of sexual stimulation or arousal; acts of

masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or any simulation or portrayal of any of the foregoing.

1.4.2 The requirements of the two immediately preceding sections only are not only for the benefit of Beneficiary but also for the benefit of all real property located within three hundred feet (300') of the Burdened Parcels. The owners and occupants of such real property and their successors and assigns are third party beneficiaries of this paragraph throughout the term of this Declaration. Notwithstanding anything to the contrary in this Declaration, the sole remedy of any such third party beneficiary claiming any violation of such sections shall be to seek injunctive relief against the persons or persons claimed to have committed such violation.

1.5 Removal. Occupants shall, upon notice of any activity by any person other than City in violation of this Agreement, promptly take reasonable steps (including without limitation contacting appropriate law enforcement officials with respect to such activity), to remove the person or persons engaged in such activity from the Burdened Parcels. Nothing in the immediately preceding sentence shall require any Occupant to take any action that (i) violates the constitutional or other rights of the person or persons to be removed; (ii) may reasonably be expected to expose any person or persons (including without limitation bystanders, the persons or persons engaged in such activity, or any agent or employee of such Occupant) to injury or death; or (iii) may reasonably be expected to expose any property to significant damage or destruction.

1.6 Quality Service. Each Burdened Parcel and the improvements thereon shall be maintained, repaired, replaced and operated in a first-class, clean and sanitary manner and shall meet or exceed the standards of maintenance at comparable facilities in Maricopa County, Arizona, all as reasonably determined by Declarant or Beneficiary (whichever is the enforcing party). Occupants' maintenance and repair obligations extend beyond the boundaries of the Burdened Parcels to the back of curb of all adjacent public streets.

1.7 Hazardous Materials. All activities upon or about the Burdened Parcels shall be subject to the following regarding any hazardous waste or materials or toxic substances or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. § 49-901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 ("CERCLA"), et seq. including without limitation 42 U.S.C. § 9601(14), the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"):

1.7.1 Occupants shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the Burdened Parcels. The prohibitions of the preceding sentence only shall not apply to:

1.7.1.1 Gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction or landscaping machinery permitted upon the Burdened Parcels when such materials are properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles permanently installed in such vehicles and machinery.

1.7.1.2 Janitorial supplies and similar materials in the minimum quantities reasonably necessary for operation of the Burdened Parcel in the manner permitted by this Declaration.

1.7.1.3 Ordinary merchandise sold at retail to the public or included in services offered to the public in compliance with this Declaration.

1.7.2 Occupants shall dispose of any Toxic Substances away from the Burdened Parcels as required by law and as reasonably required by Beneficiary by notice to the affected Occupant.

1.7.3 Occupants shall not use the Burdened Parcels in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval from the Arizona Department of Health Services or any other governmental agency unless such permit or approval is first obtained.

1.7.4 In addition to any other indemnities or obligations set forth in this Declaration, each Occupant shall pay, indemnify, defend and hold Beneficiary and Declarant harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the Burdened Parcel owned or occupied by such Occupant, including without limitation any loss or liability under CERCLA. Each Occupant shall immediately notify Beneficiary of any prohibited Toxic Substance at any time discovered by such Occupant upon the Burdened Parcel owned or occupied by such Occupant.

1.8 Occupant information. A major purpose of this Declaration is to facilitate performance by Declarant and Beneficiary of their respective obligations, and the receipt of their respective benefits under the Redevelopment Agreement, including without limitation certain payments by Beneficiary to Declarant described therein. All Occupants shall at no expense to the Beneficiary disclose from time to time to Beneficiary at Beneficiary's written request, and in addition to any disclosure that may be required by applicable law, all sales volumes, sales (transaction privilege) taxes collected and/or paid and such other information and data relating to such Burdened Parcel as (i) Beneficiary identifies in such request and (ii) Beneficiary from time to time reasonably determines from time to time to be necessary or useful for Beneficiary to determine, evidence, verify, or administer Beneficiary's or Declarant's rights or obligations with respect to the Redevelopment Agreement. Such disclosure shall be on a schedule and in a form and in such detail and subject to such administrative requirements as Beneficiary may reasonably establish from time to time, and give written notice to Declarant and the person from whom such disclosure is required. By entering onto a Burdened Parcel, an Occupant shall be deemed to have authorized Beneficiary to share such disclosure and any sales tax returns or related information with Declarant for the purpose of determining, evidencing, verifying or administering Beneficiary's or Declarant's rights or obligations with respect to the Redevelopment Agreement; any Occupant shall execute any further documents or instruments necessary to give effect to such authorization upon request by Declarant or Beneficiary. Such disclosure is limited to information and data relating in any manner to Declarant's or Beneficiary's rights or obligations under the Redevelopment Agreement and the Related Documents. To the fullest extent permitted by law, any information and data of any nature provided to Beneficiary or Declarant pursuant to this section shall be confidential and shall not be disclosed to any person other than Beneficiary and Declarant and their accountants, auditors and attorneys.

1.9 Prohibited Covenants. This Declaration is in furtherance of Beneficiary's and Declarant's effort to redevelop the Burdened Parcels and surrounding and nearby properties, which would be frustrated by the imposition of deed restrictions, covenants, negative easements or similar contracts or real property interests limiting any business activity on less than all of the Burdened Parcels that purports to be enforceable by a person who is not then actively operating a

business open to the public at the Burdened Parcels (collectively “Prohibited Covenants”). Without limitation, a covenant limiting what may be sold at a Burdened Parcel in favor of a merchant who no longer is open for business at any of the Burdened Parcels is prohibited and shall be unenforceable. No Prohibited Covenant shall be imposed upon any of the Burdened Parcels without Beneficiary’s prior written consent, which consent is not valid unless it is attached to and recorded with such Prohibited Covenant. Any deed restrictions, covenants, negative easements or similar contracts or real property interests other than Prohibited Covenants shall not require Beneficiary consent provided such matters are subordinate to this Declaration.

1.10 Compliance with Law. Occupant shall use and occupy the Burdened Parcels in accordance with all federal, state, county, and local laws, ordinances, rules and regulations as are now in effect or as may hereafter be adopted or amended. Within fifteen days following an Occupant’s receipt thereof, such Occupant shall provide to Declarant and Beneficiary a copy of any written notice alleging any violation of any law, ordinance or regulation pertaining to the Burdened Parcel owned or occupied by such Occupant. Each Occupant acknowledges that this Declaration does not constitute, and Beneficiary has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance, priority or favoritism to such Occupant with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting such Occupant, the Burdened Parcel owned or occupied by such Occupant or such Occupant’s use thereof. Such Occupant acknowledges that all of such Occupant’s obligations hereunder are in addition and cumulative to (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to such Occupant. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Declaration, such Occupant expressly waives, relinquishes and repudiates all such benefits with respect to performances rendered under this Declaration. Such Occupant further agrees that this Declaration is not intended to diminish any performances to the City of Scottsdale that would be required of such Occupant by law if this Declaration had been made between such Occupant and a private citizen. Beneficiary has not relinquished or limited any right of condemnation or eminent domain over the Burdened Parcels. This Declaration does not impair the City of Scottsdale’s power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way any Occupant or any of the Burdened Parcels. Beneficiary’s rights and remedies hereunder for any Occupant’s failure to comply with all applicable laws supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. Nothing in this Declaration shall be construed as a waiver by any Occupant of any right such Occupant may have to contest or challenge any condemnation.

II. VIOLATIONS

2. Violations. The following shall apply to any breach of this Declaration:

2.1 Compliance. Each Occupant shall comply with, perform and do each performance and thing required of such Occupant by this Declaration with respect to each Burdened Parcel in which such Occupant has or claims a real estate interest.

2.2 Event of Default by Occupant. The failure of an Occupant to perform any obligation to be performed by such Occupant under this Declaration with respect to the

Burdened Parcel owned or occupied by such Occupant, which failure is not cured within thirty (30) days after the first written notice of such failure has been given to such Occupant by Declarant or Beneficiary shall be an "Event of Default" under this Declaration by such Occupant.

2.3 Copies of Notices. If Declarant gives any notice of a failure under this section, Declarant shall contemporaneously give Beneficiary a copy of such notice. If Beneficiary gives any notice of a failure under this section, Beneficiary shall contemporaneously give Declarant a copy of such notice.

2.4 Acceptance of Cure. Declarant and Beneficiary shall each accept performance of any timely cure of any failure described in this section from any person, including any person other than an Occupant.

2.5 Remedies of Declarant and Beneficiary. Following an Event of Default, each of Declarant and Beneficiary shall be entitled to exercise any and all remedies available against the defaulting Occupant at law or in equity, including without limitation seeking injunctive relief requiring compliance with the provisions of this Declaration.

2.6 Non-waiver. Each Occupant shall have the unconditional obligation to comply with this Declaration. No failure by Declarant or Beneficiary to demand any performance required under this Declaration, and no acceptance by Declarant or Beneficiary of any imperfect or partial performance under this Declaration, shall excuse such performance or impair in any way Declarant's or Beneficiary's ability to insist, prospectively and retroactively, upon full compliance with this Declaration. No acceptance by Declarant or Beneficiary of any performance hereunder shall be deemed a compromise or settlement of any right Declarant or Beneficiary may have for additional or further payments or performances. Any waiver by Declarant or Beneficiary of any breach of condition or covenant herein contained to be kept and performed hereunder shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Declarant or Beneficiary from giving notice of default or declaring any Event of Default for any succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill or notice concerning performances due hereunder, or failure to demand any performance hereunder, shall excuse an Occupant from compliance with this Declaration nor estop Declarant or Beneficiary (or otherwise impair Declarant's or Beneficiary's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Declaration. No waiver of any description (INCLUDING ANY WAIVER OF THIS SENTENCE OR PARAGRAPH) shall be effective unless made in writing by a duly authorized representative of the waiving party specifically identifying the particular provision being waived and specifically stating the scope of the waiver. EACH OCCUPANT EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

2.7 Special Rights of City. Although this Declaration and all of the Restrictions are for the benefit of Declarant and Beneficiary, Beneficiary shall have the right, without the consent of Declarant and with such action being binding on Declarant following written notice of Beneficiary's exercise of its right, to do or refrain from doing any one or more of the following from time to time:

2.7.1 Temporarily or permanently, partially or completely, uniformly or not uniformly as to all or part of any one or more of the Burdened Parcels, and in any combination of the foregoing waive or suspend operation of all or any part of this Declaration.

2.7.2 Retract or modify any such waiver or suspension.

2.7.3 Impose conditions or limitations on any such waiver or suspension.

2.7.4 Enforce all or part of this Declaration or the Restrictions.

2.8 Applicable to Successors. The provisions of this Declaration shall be incorporated by reference, and whether or not actually incorporated by reference shall be deemed incorporated by reference, in favor of Declarant and Beneficiary in each deed, lease, sublease or other agreement for use of any portion of any of the Burdened Parcels.

2.9 Risk of Loss; Indemnification of Beneficiary. Beneficiary is not required to carry any insurance covering or affecting any of the Burdened Parcels or the use of any of Beneficiary's property used or made available for use in connection with the Burdened Parcels. Each Occupant shall assume and bear all risk of any and all loss, damage or claims to each Burdened Parcel in which such Occupant has or claims a real estate interest, or related to such Occupant's use of such Burdened Parcel or the Beneficiary's property used or made available for use in connection with such Burdened Parcel, and shall indemnify and hold Beneficiary harmless from any such loss, damage or claim, regardless of the cause of such damage, loss or claim.

III. ESTOPPEL CERTIFICATES

3. Estoppel Certificates.

3.1 Estoppel Request Fee. Each Occupant submitting an Estoppel Request (as defined below) to Beneficiary shall pay Beneficiary in advance the sum of five hundred dollars (\$500.00) as a nonrefundable fee for any request for an Estoppel Certificate, whether or not City grants such request.

3.2 Confirmation of Status. An Occupant who is an owner, lessee or tenant of a Burdened Parcel (the "Requesting Party") may, not more than twice each calendar year, give written notice (an "Estoppel Request") to Declarant and/or Beneficiary requesting written confirmation (an "Estoppel Certificate") of any of the following matters and subject to the following limitations:

3.2.1 The Estoppel Request shall specifically refer to this paragraph of this Declaration.

3.2.2 A Requesting Party may give an Estoppel Request only when the Requesting Party's interest is being conveyed (in whole or in part) or subjected to a lien.

3.2.3 An Estoppel Request shall be executed and joined in by the prospective grantee or assignee of the Requesting Party's interest (the "Estoppel Assignee").

3.2.4 The Estoppel Request must include warranties and representations by the Estoppel Assignee to the best of its knowledge that the matters to be confirmed as stated in the Estoppel Request are true and that the information stated in the Estoppel Request is complete and true.

3.2.5 The Estoppel Request must include warranties and representations by the Requesting Party that the matters to be confirmed as stated in the Estoppel Request are true and that the information stated in the Estoppel Request is complete and true.

3.2.6 The Estoppel Request must specify the matters Declarant or Beneficiary, as applicable, is requested to confirm. The Estoppel Request may request only confirmation whether or not the following matters are true, to the best of the actual knowledge without investigation of the providing party. Actual knowledge refers to knowledge of (i) with respect to Beneficiary, Beneficiary's contract administrator, general manager – economic vitality, and City Manager, and (ii) with respect to Declarant, the officer or representative of Declarant named therein. Estoppel Certificates are limited to the following matters:

3.2.6.1 That this Declaration is in effect and has not been amended except as stated in the Estoppel Request.

3.2.6.2 The copies of this Declaration and any amendments recorded in the office of the Maricopa County recorder are true and complete copies of this Declaration.

3.2.6.3 An Event of Default by the Requesting Party does not exist (except that Estoppel Certificates shall exclude matters of zoning, regulatory compliance or other governmental or regulatory issues).

3.2.6.4 The party providing the Estoppel Certificate has not given the Requesting Party any notices demanding compliance with this Declaration for which noncompliance then exists.

3.2.7 The party receiving an Estoppel Request shall provide the Estoppel Certificate to the Requesting Party not less than thirty (30) days after receipt of a proper and complete Estoppel Request and such additional information as the receiving party may reasonably request relating to the proposed conveyance or lien. The Estoppel Certificate may contain such limits, conditions and other statements as may be necessary to reflect the true status of the Project and this Declaration. An Estoppel Certificate does not amend or otherwise modify this Declaration. An Estoppel Certificate given by Beneficiary does not bind Beneficiary to any provisions of any agreement between Declarant and the Estoppel Assignee.

3.3 Failure to Deliver Estoppel Certificate. Failure to timely provide an Estoppel Certificate shall entitle the Requesting Party, as its sole and exclusive remedy, to seek injunctive relief requiring production of such Estoppel Certificate. The Requesting Party shall have no right to damages for failure to provide an Estoppel Certificate or for providing an Estoppel Certificate containing factual errors.

VII. EFFECT AND AMENDMENT

4. Effect and Amendment.

4.1 Term. The term of this Declaration shall be perpetual, except that this Declaration shall automatically terminate upon any termination of the Redevelopment Agreement prior to the Third Closing.

4.2 Amendments. This Declaration may not be amended except by a formal writing executed by Declarant, Beneficiary, and (a) the owners of not less than a two-thirds (2/3) majority of the Burdened Parcels by gross land area of the Burdened Parcels if the Burdened Parcels are not subject to a condominium declaration or owners association or (b) the owners association if the Burdened Parcels are subject to a condominium declaration or owners association.

4.3 Binding Nature. This Declaration shall run with and be appurtenant to the title to each of the Burdened Parcels, shall bind all successor owners of the Burdened Parcels and benefit all successors of Beneficiary and Declarant. This Declaration shall also be enforceable by Beneficiary personally.

4.4 Non-Merger. The obligations contained herein shall not terminate by merger of title.

4.5 Action by Association. In the event any portion of the Burdened Parcels is made the subject of a condominium declaration or otherwise made subject to an owners association, such association shall be subject to all of the provisions of this Declaration.

4.6 Nature of Restrictions. The Restrictions and this Declaration are unconditional, irrevocable and legally binding and enforceable covenants, conditions, restrictions and easements running with the land against Declarant and all future owners of the Burdened Parcels as a burden on the Burdened Parcels for the benefit of Declarant and Beneficiary.

4.7 Title Priorities. Unless otherwise agreed in writing by Beneficiary, in no event shall any interest in any of the Burdened Parcels created by or deriving through Declarant (whether arising before, concurrent with, or after the date of this Declaration) cover, affect or have any priority higher than or equal to, any of the Beneficiary's rights in the Burdened Parcels or under this Declaration.

V. NATURE OF DECLARANT'S RIGHTS

5. Declarant's Rights. The following shall apply with respect to Declarant's rights under this Declaration:

5.1 Separate Rights; No Merger. Declarant's rights under this Declaration shall be separate and distinct from, and shall not merge with, any right or interest that Declarant may from time-to-time have in any of the Burdened Parcels.

5.2 Special Declarant's Rights. A major purpose for Declarant's rights under this Agreement is to enable Declarant to perform its obligations and receive the benefits to which it is entitled to under the Redevelopment Agreement. Accordingly, Declarant shall have and hereby reserves the following rights (for Declarant and for the successors and assigns of Declarant:

5.2.1 The right to assign Declarant's interest in and rights and obligations under this Declaration, either in connection with or separate from the title then held by Declarant in any

of the Burdened Parcels, to any assignee of Declarant's rights to receive payments of the City Investment under the Redevelopment Agreement.

5.2.2 The irrevocable right and power to, following any Event of Default by any Occupant with respect to any Burdened Parcel to perform, in the name and at the expense of the such Occupant, such action as may be reasonably deemed appropriate by Declarant to cure the failure that caused such Event of Default, in which event such Occupant shall promptly after written demand by Declarant, reimburse Declarant for all costs and expenses incurred by Declarant in making such cure.

VI. MISCELLANEOUS

6. Miscellaneous.

6.1 No Additional Warranties. Each party hereto has been assisted by independent counsel of its own choosing and has been fully apprised of all risks associated with this Declaration and the transactions contemplated herein.

6.2 Limited Severability. If any provision of this Declaration is declared void or unenforceable (or is construed as requiring the Beneficiary to do any act in violation of any constitutional provision, law, regulation, City of Scottsdale code or City of Scottsdale charter), such provision shall be deemed severed from this Declaration and this Declaration shall otherwise remain in full force and effect.

6.3 Conflicts of Interest. No member, official or employee of Beneficiary shall have any direct or indirect interest in this Declaration, nor participate in any decision relating to the Declaration that is prohibited by law.

6.4 No Partnership. This Declaration and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

6.5 Nonliability of Beneficiary Officials and Employees. No member, official, representative or employee of Beneficiary shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by Beneficiary or for any amount which may become due to any party or successor, or with respect to any obligation of Beneficiary or otherwise under the terms of this Declaration or related to this Declaration.

6.6 Notices. Notices hereunder shall be given in writing delivered to the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Beneficiary: David Roderique
Economic Development Director
City of Scottsdale
7447 E. Indian School Road, Suite 200
Scottsdale, AZ 85251

Copy to: City of Scottsdale
3939 Drinkwater Blvd.
Scottsdale, AZ 85251

Attn: City Attorney

If to Declarant: Los Arcos Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, Arizona 85018
Attn: Mr. Steve Ellman

Copy to: Los Arcos Development, LLC
4040 East Camelback Road, Suite 250
Phoenix, Arizona 85018
Attn: Mr. Bob Kaufman

And copy to: Squire, Sanders & Dempsey LLP
40 North Central Avenue, Suite 2700
Phoenix, Arizona 85004
Attn: Richard F. Ross, Esq.

By notice from time to time, Declarant may designate any other address or addresses (and additional addressees of such notices) for receiving notice hereunder, provided, however, that any designation of changed or additional addresses for notice hereunder by Declarant (an "Address Change Notice") shall not be binding or effective on Beneficiary unless the Address Change Notice is in the form attached hereto as Exhibit "B" and is recorded by Declarant with the County Recorder of Maricopa County, Arizona; provided, however, that following the Third Closing and until termination of the Parking Lease no person other than then current Lessee under the Parking Lease shall be entitled to give an Address Change Notice and any alleged Address Change Notice given by any other person shall be void. Service of any notice by mail shall be deemed to be complete three (3) days (excluding Saturday, Sunday and legal holidays) after the notice is deposited in the United States mail.

6.7 Time of Essence. Time is of the essence of each and every provision of this Declaration.

6.8 Integration. This Declaration constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the Burdened Parcels.

6.9 Construction. Whenever the context of this Declaration requires, the singular shall include the plural, and the masculine shall include the feminine. This Declaration was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Declaration. The terms of this Declaration were established in light of the plain meaning of this Declaration and this Declaration shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor either party.

6.10 No Setoffs. All amounts payable hereunder shall be paid in full without setoff or deduction of any description. Each Occupant who accepts a real estate interest in a Burdened Parcel expressly waives any right of setoff.

6.11 Paragraph Headings. The paragraph headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Declaration.

6.12 No Third Party Beneficiaries. Except for the limited provisions expressly stated to be for the benefit of a third party, no person or entity shall be a third party beneficiary to this Declaration or shall have any right or cause of action hereunder. Beneficiary shall have no liability to third parties for any approval of plans related to the Burdened Parcels, construction of any improvements on the Burdened Parcels, Declarant's or any Occupant's negligence, Declarant's or any Occupant's failure to comply with the provisions of this Declaration, or otherwise as a result of the existence of this Declaration.

6.13 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Declaration for all purposes.

6.14 Attorneys' Fees. In the event an action or suit or proceeding is brought by any party to enforce compliance with this Declaration or for failure to observe any of the covenants of this Declaration or to vindicate or exercise any rights or remedies hereunder, the non-prevailing party shall pay the prevailing party's costs of such action or suit and the prevailing party's attorneys' fees and other litigation costs, all as determined by the court and not a jury.

6.15 Choice of Law. This Declaration shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

6.16 Institution of Legal Actions. In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default or to obtain any other remedy consistent with this Declaration. Such legal actions shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or in the Federal District Court in the District of Arizona sitting in Maricopa County. Declarant, Beneficiary and each Occupant who accepts a real estate interest in the Property agree to the exclusive jurisdiction of such courts. Claims by Occupants against Beneficiary shall comply with time periods and other requirements of Beneficiary's claims procedures from time to time.

6.17 Approvals and Inspections. All approvals, reviews and inspections by Beneficiary under this Declaration or otherwise are for Beneficiary's sole benefit and not for the benefit of Declarant, Occupants, their contractors, engineers or other consultants or agents, or any other person.

6.18 Statutory Cancellation Right. In addition to its other rights hereunder, Beneficiary shall have the rights specified in A.R.S. § 38-511.

EXECUTED as of the date first given above.

Developer: **LOS ARCOS DEVELOPMENT L.L.C.**,
a Delaware limited liability company

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of Los Arcos Development L.L.C., a Delaware limited liability company.

Notary Public

My Commission Expires:

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PARCEL NO. 1:

That part of the Northwest quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and

Beginning at a point North 88 degrees 52 minutes 30 seconds East, (assumed bearing), a distance of 65.00 feet and South 1 degree 07 minutes 30 seconds East, a distance of 65.00 feet from the Northwest corner of said Section 2, (said corner also being the intersection of McDowell Road and Scottsdale Road);

thence North 88 degrees 52 minutes 30 seconds East along a line parallel with and distant Southerly 65.00 feet from the North line of Section 2, (said line being also the South line of McDowell Road), a distance of 536.46 feet to the True Point of Beginning; being the Northwest corner of Parcel 1 conveyed to Broadway Hale Stores by instrument recorded in Docket 7340, page 398, records of Maricopa County, Arizona;

thence continuing North 88 degrees 52 minutes 30 seconds East, along last said parallel line (and South line of McDowell Road), a distance of 541.69 feet, being the Northwest corner of parcel conveyed to The Valley National Bank by instrument recorded in Docket 4277, page 314, records of Maricopa County, Arizona;

thence South 1 degree 07 minutes 30 seconds East, a distance of 200.00 feet;

thence North 88 degrees 52 minutes 30 seconds East, a distance of 145.34 feet to the intersection with a line parallel with and 30.00 feet Westerly of the East line of the Northwest quarter of the Northwest quarter of said Section 2 (said parallel line also being the West line of 74th Street);

thence South 0 degrees 12 minutes 40 seconds West, along last said parallel line and West line of 74th Street, a distance of 569.81 feet;

thence South 88 degrees 52 minutes 30 seconds West, a distance of 405.81 feet, to the Southwest corner of Parcel No. 2 conveyed to Broadway-Hale Stores by instrument recorded in Docket 7340, page 398, records of Maricopa County, Arizona;

thence North 1 degree 07 minutes 30 seconds West, a distance of 413.50 feet;

thence South 88 degrees 52 minutes 30 seconds West, a distance of 212.68 feet;

thence North 1 degree 07 minutes 30 seconds West, a distance of 45.70 feet;

thence South 88 degrees 52 minutes 30 seconds West, a distance of 55.25 feet;

thence North 1 degree 07 minutes 30 seconds West, a distance of 310.46 feet to the True Point of Beginning.

PARCEL NO. 2:

That part of the Northwest quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County,

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Arizona, described as follows:

Beginning at a point which lies South (South 00 degrees 00 minutes 28 seconds West measured), 1390.55 feet and North 88 degrees 59 minutes 20 seconds East, 65.01 feet from the Northwest corner of said Section 2, said point being the intersection of the North line of an alley shown on a plat of New Papago Parkway Unit 9, said plat being recorded at Book 85 of Maps, page 33, records of Maricopa County, Arizona, and the Easterly line of Scottsdale Road;

thence North 88 degrees 59 minutes 20 seconds East along said North line, 1089.41 feet (1089.95 feet measured) to an angle point therein;

thence continuing along said North line, North 73 degrees 02 minutes 20 seconds East, 164.55 feet to a point in the Westerly line of 74th Street, said point lying in a curve, concave Northeasterly and having a radius of 534.01 feet (a radial line through said point bears North 73 degrees 02 minutes 20 seconds East);

thence Northerly along said curve and along said Westerly line of 74th Street through a central angle of 17 degrees 10 minutes 20 seconds and an arc distance of 160.05 feet to a point of tangency in said Westerly line;

thence continuing along said Westerly line North 00 degrees 12 minutes 40 seconds East, 354.94 feet to a line which is parallel with and distant Southerly 834.66 feet, measured at right angles, from the centerline of McDowell Road;

thence South 88 degrees 52 minutes 30 seconds West along said parallel line, 1224.95 feet (1225.42 feet measured) to the Easterly line of said Scottsdale Road;

thence South (South 00 degrees 00 minutes 28 seconds West measured) along said Easterly line 555.87 feet to the point of beginning.

PARCEL NO. 3:

That part of the Northwest quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at the Northwest corner of said Section 2 and running;

thence South, along the West line of said Section 2, a distance of 290.00 feet;

thence North 88 degrees 52 minutes 30 seconds East, parallel with the North line of said Section 2, a distance of 65.00 feet to a point on the East line of Scottsdale Road;

thence South, along the East line of Scottsdale Road, 544.80 feet to a point in a line which is parallel with and distant Southerly 834.66 feet recorded, 834.81 as measured at right angles from the Northerly line of said Section 2;

thence North 88 degrees 52 minutes 30 seconds East, along last mentioned parallel

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line, 819.33 feet recorded, 819.61 feet measured;

thence at right angle North 01 degrees 07 minutes 30 seconds West 413.50 feet;

thence South 88 degrees 52 minutes 30 seconds West, parallel with the North line of said Section 2, 212.68 feet;

thence North 01 degrees 07 minutes 30 seconds West, 45.70 feet;

thence South 88 degrees 52 minutes 30 seconds West, parallel with the North line of said Section 2, 55.25 feet;

thence at right angles North 01 degrees 07 minutes 30 seconds West, 310.46 feet to a point on the Southerly line of McDowell Road;

thence South 88 degrees 52 minutes 30 seconds West, along the Southerly line of McDowell Road, 311.28 feet recorded, 311.46 feet measured to the East line of the West 290 feet of the Northwest quarter of the Northwest quarter of said Section 2;

thence North, along the East line of the West 290 feet of the Northwest quarter of the Northwest quarter of said Section 2, a distance of 65.00 feet to the North line of said Section 2;

thence South 88 degrees 52 minutes 30 seconds West, along said North line, 290.00 feet to the Northwest corner of said Section 2 and the Point of Beginning.

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That part of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at the intersection of a line which is parallel with and distant Easterly, 30.00 feet, measured at right angles, from the West line of said Northeast quarter of the Northwest quarter (centerline of 74th Street) and a line which is parallel with and distant Southerly, 925.92 feet, measured at right angles, from the North line of said Section 2 (last mentioned line being also a line which bears North 88 degrees 52 minutes 30 seconds East along the South line of a non-exclusive easement for ingress and egress recorded as Parcel No. 1 at Docket 4551, page 138, records of Maricopa County, Arizona;

thence North 88 degrees 52 minutes 30 seconds East along last mentioned line, 182.49 feet to the West line of a Parcel of land conveyed to Tucson District Methodist Union by Deed recorded at Docket 4551, page 142, records of said Maricopa County;

thence South 00 degrees 12 minutes 40 seconds West along the Westerly line of last mentioned land, 359.43 feet to the Northerly line of an alley shown on a plat of New Papago Parkway Unit 8, said plat being recorded in Book 85 of Maps, page 21, records of said Maricopa County;

thence South 73 degrees 02 minutes 20 seconds West along last mentioned Northerly line, 168.83 feet to a point in the Easterly line of 74th Street, said point lying in a curve, concave Northeasterly and having a radius of 474.01 feet (a radial through said point bears North 73 degrees 02 minutes 20 seconds East);

thence Northerly along said curve and along said Easterly line of 74th Street through a central angle of 17 degrees 10 minutes 20 seconds and an arc distance of 142.07 feet to a point of tangency in the first above-mentioned parallel line (Easterly line of 74th Street);

thence North 00 degrees 12 minutes 40 seconds East along last mentioned line, 265.06 feet to the point of beginning.

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PARCEL NO. 1:

That part of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at a point South 0 degrees 12 minutes 40 seconds West 65 feet and North 88 degrees 52 minutes 30 seconds East 30 feet from the Northwest corner of said Northeast quarter of the Northwest quarter of Section 2;

thence North 88 degrees 52 minutes 30 seconds East along a line parallel with and 65 feet South of the North line of said Section 2 (said line being along the Southerly line of McDowell Road) a distance of 590.00 feet to the intersection of the South line of McDowell Road and the West line of an access road running North and South through said Northeast quarter of the Northwest quarter of Section 2;

thence South 0 degrees 12 minutes 40 seconds West along the West line of said access road 545.00 feet to a line which is parallel with and distant Southerly 544.85 feet, measured at right angles, from the South line of McDowell Road;

thence South 88 degrees 52 minutes 30 seconds West along said parallel line 222.35 feet to a point of intersection with a line which is parallel with and distant Easterly 367.55 feet, measured at right angles, from the East line of 74th Street (said point of intersection being also the True Point of Beginning of this parcel);

thence South 0 degrees 12 minutes 40 seconds West along last mentioned parallel line 276.14 feet to a point on the North line of an access road running East and West through said Northeast quarter of the Northwest quarter of Section 2;

thence North 88 degrees 52 minutes 30 seconds East along said North line 222.35 feet to a point on the West line of said access road running North and South;

thence North 0 degrees 12 minutes 40 seconds East along said West line 276.14 feet to the line which is parallel with and distant Southerly 544.85 feet, measured at right angles, from said Southerly line of McDowell Road;

thence South 88 degrees 52 minutes 30 seconds West along last mentioned parallel line 222.35 feet to the True Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at a point South 0 degrees 12 minutes 40 seconds West, 65 feet and North 88 degrees 52 minutes 30 seconds East, 30 feet from the Northwest corner of said Northeast quarter of the Northwest quarter of Section 2;

thence North 88 degrees 52 minutes 30 seconds East along a line parallel with and 65

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feet South of the North line of Section 2, (said line being also the Southerly line of McDowell Road), a distance of 590.00 feet to the intersection of the South line of McDowell Road and the West line of an access road running North and South through said Northeast quarter of the Northwest quarter of Section 2;

thence South 0 degrees 12 minutes 40 seconds West along the West line of said access road, 545.00 feet to a line which is parallel with and distant Southerly, 544.85 feet, measured at right angles, from the South line of McDowell Road;

thence South 88 degrees 52 minutes 30 seconds West along said parallel line 222.35 feet to a point of intersection with a line which is parallel with and distant Easterly, 367.55 feet, measured at right angles from the East line of 74th Street (said point of intersection being also the point of beginning of this Parcel);

thence South 0 degrees 12 minutes 40 seconds West along last mentioned parallel line, 276.14 feet to a point on the North line of an access road running East and West through said Northeast quarter of the Northwest quarter of Section 2;

thence South 88 degrees 52 minutes 30 seconds West along the North line of said access road, 119.92 feet to a point of intersection with a line which is parallel with and distant Easterly, 247.66 feet, measured at right angles, from the East line of said 74th Street;

thence North 0 degrees 12 minutes 40 seconds East along last mentioned parallel line 276.14 feet to the line which is parallel with a distant Southerly, 544.85 feet measured at right angles from Southerly line of McDowell Road;

thence North 88 degrees 52 minutes 30 seconds East along last mentioned parallel line, 119.92 feet to the point of beginning.

PARCEL NO. 3:

That part of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at a point South 0 degrees 12 minutes 40 seconds West (assumed bearing), 65.00 feet and North 88 degrees 52 minutes 30 seconds East, 30.00 feet from the Northeast corner of the Northwest quarter of the Northwest quarter of said Section 2;

thence South 0 degrees 12 minutes 40 seconds West along a line parallel with and distant Easterly 30.00 feet from the West line of said Northeast quarter of the Northwest quarter of Section 2 (said line being also the East line of 74th Street), a distance of 545.00 feet to the True Point of Beginning, being the Northwest corner of parcel conveyed to Broadway-Hale Stores by instrument recorded in Docket 6310, page 585, records of Maricopa County, Arizona;

thence North 88 degrees 52 minutes 30 seconds East, a distance of 247.73 feet;

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thence South 0 degrees 12 minutes 40 seconds West, a distance of 276.14 feet;

thence South 88 degrees 52 minutes 30 seconds West, a distance of 247.73 feet; to the intersection of last said parallel line (and East line 74th Street);

thence North 0 degrees 12 minutes 40 seconds East along said parallel line (and East line of 74th Street), a distance of 276.14 feet to the True Point of Beginning.

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